



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

[EPA-R02-OAR-2022-0400; FRL 9785-01-R2]

### Outer Continental Shelf Air Regulations Update to Include New York State Requirements

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of New York is the COA. The intended effect of approving the OCS requirements for the State of New York is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

**DATES:** Written comments must be received on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**ADDRESSES:** Submit your comments, identified by Docket ID Number **EPA-R02-OAR-2022-0400** at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute.

Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Viorica Petriman, Air Programs

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## **SUPPLEMENTARY INFORMATION:**

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### **I. Background and Purpose**

On September 4, 1992, EPA promulgated 40 CFR part 55 ("Part 55"),<sup>1</sup> which established requirements to control air pollution from Outer Continental Shelf (OCS) sources in order to attain and maintain Federal and State ambient air quality standards (AAQS) and to comply with the provisions of part C of title I of the Clean Air Act (CAA). The Part 55 regulations apply to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude.

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<sup>1</sup> The reader may refer to the Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

Section 328(a) of the CAA requires that for such OCS sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the corresponding onshore area (COA). Because the OCS requirements are based on onshore requirements, and onshore requirements may change, CAA section 328(a)(1) requires that the EPA update the OCS requirements as necessary to maintain consistency with onshore requirements. To comply with this statutory mandate, the EPA must incorporate by reference into Part 55 all relevant state rules in effect for onshore sources, so they can be applied to OCS sources located offshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

40 CFR 55.12 specifies certain times at which part 55's incorporation by reference of a state's rules must be updated. One time such a "consistency update" must occur is when any OCS source applicant submits a Notice of Intent (NOI) under 40 CFR 55.4 for a new or a modified OCS source. 40 CFR 55.4(a) requires that any OCS source applicant must submit to EPA an NOI before performing any physical change or change in method of operation that results in an increase in emissions. EPA must conduct any necessary consistency update when it receives an NOI, and prior to receiving any application for a preconstruction permit from the OCS source applicant. 40 CFR 55.6(b)(2) and 55.12(f). This proposed action is being taken in response to the submittal of an NOI to EPA, with copies provided to certain state agencies, by March 14, 2022, by Empire Wind Offshore, LLC, which proposes to submit an OCS permit application for

the construction of a new OCS source (a wind energy project) about 14 miles offshore New York.

## **II. The EPA's Evaluation**

In updating 40 CFR part 55, the EPA reviewed the New York State Department of Environmental Conservation ("NYSDEC") air rules currently in effect, to ensure that they are rationally related to the attainment or maintenance of Federal and State AAQS or part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are applicable to OCS sources. *See* 40 CFR 55.1. The EPA has also evaluated the rules to ensure they are not arbitrary and capricious. *See* 40 CFR 55.12(e). The EPA has excluded New York's administrative or procedural rules<sup>2</sup>, and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and State AAQS.

## **III. The EPA's Proposed Action**

In today's action, the EPA is proposing to update the "New York" section of Appendix A to 40 CFR part 55 to incorporate by reference relevant New York air pollution control rules that are found at various locations in Chapter III of Title 6 of the New York Codes, Rules and Regulations (NYCRR), and are currently in effect. The specific provisions being incorporated by reference are identified in the proposed regulatory language at the end of this proposed rule.

## **IV. Incorporation by Reference**

In this proposed rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the

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<sup>2</sup> Each COA which has been delegated the authority to implement and enforce part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, as is the case in New York, EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

NYSDEC air rules that are applicable to OCS sources and which are currently in effect. These regulations are described in Section III (“The EPA’s Proposed Action”) of this preamble. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 2 Office. Please contact the person identified in the “**For Further Information Contact**” section of this preamble for more information.

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states’ seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, the EPA’s role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Clean Air Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by the EPA.

### **a. Executive Order 12866, Regulatory Planning and Review**

This action is not a “significant regulatory action” under the terms of Executive Orders (EO) 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011) and is therefore not subject to review under the EO.

### **b. Paperwork Reduction Act (PRA)**

This action does not impose any new information collection burden under PRA because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, Appendix A. OMB has previously approved the information collection

activities contained in the existing regulations at 40 CFR part 55 and, by extension, this update to 40 CFR part 55, and has assigned OMB control number 2060-0249. This action does not impose a new information burden under PRA because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, Appendix A.

c. *Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant impact on a substantial number of small entities under the RFA. This proposed rule does not impose any requirements or create impacts on small entities. This proposed consistency update under CAA section 328 will not create any new requirements but simply proposes to update the State requirements incorporated by reference into 40 CFR part 55 to match the current State requirements.

d. *Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate or significantly or uniquely affect small governments as described in UMRA, 2 U.S.C. 1531–1538. The action imposes no enforceable duty on any state, local or tribal governments.

e. *Executive Order 13132, Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

f. *Executive Order 13175, Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct costs on tribal

governments, nor preempt tribal law. It merely updated the State law incorporated by reference into 40 CFR part 55 to match current State requirements.

g. *Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 and simply proposes to update the State requirements incorporated by reference into 40 CFR part 55 to match the current State requirements.

h. *Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use.*

This proposed rule is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

i. *National Technology Transfer and Advancement Act*

This rulemaking is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

j. *Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population*

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health, or environmental effects, using practicable and legally permissible methods.

## **List of Subjects in 40 CFR Part 55**

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

**Lisa Garcia,**  
*Regional Administrator,*  
*Region 2.*

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows.

**PART 55 – [AMENDED]**

1. The authority citation for 40 CFR part 55 continues to read as follows:

**Authority:** Section 328 of the Clean Air Act (42 U.S.C. 7401, et seq.) as amended by Public Law 101-549.

2. Section 55.14 is amended by revising the paragraph (e)(16)(i)(A) to read as follows:

**§55.14 Requirements that apply to OCS sources located within 25 miles of States’ seaward boundaries, by State.**

\* \* \* \* \*

(e) \* \* \*

(16) \* \* \*

(i) \* \* \*

(A) State of New York Requirements Applicable to OCS Sources, March 10, 2022.

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3. Appendix A to 40 CFR part 55 is amended by revising the entry for “New York” to read as follows:

**Appendix A to Part 55 – Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State**

\* \* \* \* \*

**New York**

(a) State requirements.

(1) The following State of New York requirements are applicable to OCS Sources, as of March 10, 2022. New York Environmental Conservation Law - Department of Environmental Conservation. The following sections of Title 6, Chapter III:

**Subchapter A. Prevention and Control of Air Contamination and Air Pollution**

## **Part 200. General Provisions**

6 NYCRR 200.1. Definitions (effective 4/2/2020)

6 NYCRR 200.3. False Statement (effective 6/16/1972)

6 NYCRR 200.4. Severability (effective 8/9/1984)

6 NYCRR 200.6. Acceptable Ambient Air Quality (effective 4/6/1983)

6 NYCRR 200.7. Maintenance of Equipment (effective 2/22/1979)

6 NYCRR 200.9. Referenced Material (effective 2/11/2021)

## **Part 201. Permits and Certificates**

6 NYCRR 201-1.1. Purpose and applicability (effective 2/22/2013)

6 NYCRR 201-1.4. Malfunctions and start-up/shutdown activities (effective 2/25/2021)

6 NYCRR 201-1.5. Emergency defense (effective 2/25/2021)

6 NYCRR 201-1.7. Recycling and salvage (effective 2/22/2013)

6 NYCRR 201-1.8. Prohibition of reintroduction of collected contaminants to the air  
(effective 2/22/2013)

6 NYCRR 201-1.11. Temporary emission sources (effective 2/25/2021)

6 NYCRR 201-1.12. Suspension, reopening, reissuance, modification, or revocation of air  
permits (effective 2/25/2021)

6 NYCRR 201-2. Definitions (effective 2/25/2021)

6 NYCRR 201-4. Minor Facility Registration (effective 2/25/2021)

6 NYCRR 201-5. State Facility Permits (effective 2/25/2021)

6 NYCRR 201-6. Title V Facility Permits (effective 2/25/2021)

6 NYCRR 201-7. Federally Enforceable Emission Caps (effective 2/25/2021)

6 NYCRR 201-8. General Permits (effective 2/22/2013)

6 NYCRR 201-9. Tables (effective 2/25/2021)

## **Part 202. Emissions Verification**

6 NYCRR 202-1. Emissions Testing, Sampling and Analytical Determinations (effective 9/30/2010)

6 NYCRR 202-2. Emission Statements (effective 12/3/2020)

**Part 207. Control Measures for an Air Pollution Episode** (effective 2/22/1979)

**Part 211. General Prohibitions** (effective 1/1/2011)

**Part 212. Process Operations** (effective 6/13/2015)

**Part 215. Open Fires** (effective 10/14/2009)

**Part 219. Incinerators**

6 NYCRR 219-1. Incineration - General Provisions (effective 3/15/2020)

6 NYCRR 219-2. Municipal and Private Solid Waste Incineration Facilities (effective 5/21/2005)

6 NYCRR 219-10. Reasonably Available Control Technology (RACT) For Oxides of Nitrogen (NO<sub>x</sub>) at Municipal and Private Solid Waste Incineration Units (effective 3/15/2020)

**Part 221. Asbestos-Containing Surface Coating Material** (effective 9/29/1972)

**Part 222. Distributed Generation Sources** (effective 3/26/2020)

**Part 225. Fuel Consumption and Use**

6 NYCRR 225-1. Fuel Composition and Use - Sulfur Limitations (effective 2/4/2021)

6 NYCRR 225-2. Fuel Composition and Use - Waste Oil as a Fuel (effective 4/2/2020)

6 NYCRR 225-3. Fuel Composition and Use - Gasoline (effective 11/4/2001)

6 NYCRR 225-4. Motor Vehicle Diesel Fuel (effective 5/8/2005)

**Part 226. Solvent Metal Cleaning Processes and Industrial Cleaning Solvents**  
(effective 11/1/2019)

**Part 227. Stationary Combustion Installations**

6 NYCRR 227-1. Stationary Combustion Installations (effective 2/25/2000)

6 NYCRR 227-2. Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO<sub>x</sub>) (effective 12/7/2019)

6 NYCRR 227-3. Ozone Season Oxides of Nitrogen (NO<sub>x</sub>) Emission Limits for Simple Cycle and Regenerative Combustion Turbines (effective 1/16/2020)

**Part 228. Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers** (effective 6/5/2013)

**Part 229. Petroleum and Volatile Organic Liquid Storage and Transfer** (effective 4/4/1993)

**Part 230. Gasoline Dispensing Sites and Transport Vehicles** (effective 2/11/2021)

**Part 231. New Source Review for New and Modified Facilities**

6 NYCRR 231-3. General Provisions (effective 2/25/2021)

6 NYCRR 231-4. Definitions (effective 2/25/2021)

6 NYCRR 231-5. New Major Facilities and Modifications to Existing Non-Major Facilities in Nonattainment Areas, and Attainment Areas of the State Within the Ozone Transport Region (effective 2/25/2021)

6 NYCRR 231-6. Modifications to Existing Major Facilities in Nonattainment Areas and Attainment Areas of the State Within the Ozone Transport Region (effective 2/25/2021)

6 NYCRR 231-7. New Major Facilities and Modifications to Existing Non-Major Facilities in Attainment Areas (Prevention of Significant Deterioration) (effective 2/25/2021)

6 NYCRR 231-8. Modifications to Existing Major Facilities in Attainment Areas (Prevention of Significant Deterioration) (effective 2/25/2021)

6 NYCRR 231-9. Plantwide Applicability Limitation (PAL) (effective 2/25/2021)

6 NYCRR 231-10. Emission Reduction Credits (ERCs) (effective 2/25/2021)

6 NYCRR 231-11. Permit and Reasonable Possibility Requirements (effective 2/25/2021)

6 NYCRR 231-12. Ambient Air Quality Impact Analysis (effective 2/25/2021)

6 NYCRR 231-13. Tables and Emission Thresholds (effective 2/25/2021)

**Part 241. Asphalt Pavement and Asphalt Based Surface Coating** (effective 1/1/2011)

**Part 242. CO<sub>2</sub> Budget Trading Program**

6 NYCRR 242-1. CO<sub>2</sub> Budget Trading Program General Provisions (effective 12/31/2020)

6 NYCRR 242-2. CO<sub>2</sub> Authorized Account Representative for CO<sub>2</sub> Budget Sources (effective 12/31/2020)

6 NYCRR 242-3. Permits (effective 1/1/2014)

6 NYCRR 242-4. Compliance Certification (effective 1/1/2014)

6 NYCRR 242-5. CO<sub>2</sub> Allowance Allocations (effective 12/31/2020)

6 NYCRR 242-6. CO<sub>2</sub> Allowance Tracking System (effective 12/31/2020)

6 NYCRR 242-7. CO<sub>2</sub> Allowance Transfers (effective 1/1/2014)

6 NYCRR 242-8. Monitoring and Reporting (effective 12/31/2020)

6 NYCRR 242-10. CO<sub>2</sub> Emissions Offset Projects (effective 12/31/2020)

**Part 243. CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program** (effective 1/2/2019)

**Part 244. CSAPR NO<sub>x</sub> Annual Trading Program** (effective 1/2/2019)

**Part 245. CSAPR SO<sub>2</sub> Group 1 Trading Program** (effective 1/2/2019)

**Subchapter B. Air Quality Classifications and Standards**

**Part 256. Air Quality Classifications System** (effective 5/1/1972)

**Part 257. Air Quality Standards**

6 NYCRR 257-1. Air Quality Standards-General (effective 12/6/2019)

6 NYCRR 257-2. Air Quality Standards-Sulfur Dioxide (SO<sub>2</sub>) (effective 3/18/1977)

6 NYCRR 257-3. Air Quality Standards-Particulates (effective 12/6/2019)

6 NYCRR 257-4. Ambient Air Quality Standards-Fluorides (effective 12/6/2019)

6 NYCRR 257-5. Ambient Air Quality Standards-Hydrogen Sulfide (H<sub>2</sub>S) (effective 12/6/2019)

**Subchapter C. Air Quality Area Classifications**

**Part 287. Nassau County** (effective 5/1/1972)

**Part 288. New York City** (effective 5/1/1972)

**Part 307. Suffolk County** (effective 5/1/1972)

**Part 315. Westchester County** (effective 5/1/1972)

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